

HOUSE BILL NO. 259

INTRODUCED BY C. KAUFMANN

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A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING CIVIL UNIONS; PROVIDING FOR THE INDIVIDUALS WHO MAY ENTER CIVIL UNIONS; PROVIDING A PROCEDURE FOR ESTABLISHING A CIVIL UNION; PROVIDING FOR A LICENSE AND RECORDING FOR A CIVIL UNION; PROVIDING FOR THE EFFECTS OF A CIVIL UNION; PROVIDING FOR THE DISSOLUTION OF A CIVIL UNION; AND PROVIDING PENALTIES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Definitions.** As used in [sections 1 through 17], unless the context requires otherwise, the following definitions apply:

- (1) "Certificate of civil union" means a document that certifies that the individuals named on the certificate have established a civil union in this state in compliance with [sections 1 through 17].
- (2) "Civil union" means that two eligible individuals have established a relationship pursuant to [sections 1 through 17] and may receive the benefits and protections and be subject to the responsibilities of spouses.
- (3) "Department" means the department of public health and human services provided for in 2-15-2201.
- (4) "Marriage" has the meaning provided in Article XIII, section 7, of the Montana constitution.
- (5) "Party to a civil union" means an individual who has established a civil union pursuant to [sections 1 through 17].

**NEW SECTION. Section 2. Requisites for valid civil union -- recognition of foreign civil unions.**

- (1) For a civil union to be established in Montana, the parties to a civil union may not be parties to another civil union or a marriage and shall meet the criteria and obligations set forth in [sections 8 through 13].
- (2) Civil unions validated by the laws of the place in which they were contracted or by the domicile of the parties are valid in this state.

**NEW SECTION. Section 3. Individual not to enter civil union with relative.** (1) An individual may not enter a civil union with the individual's parent, grandparent, child, grandchild, sibling, aunt, uncle, niece, or



1 nephew.

2 (2) A civil union between individuals prohibited from entering a civil union in subsection (1) is void.

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4 **NEW SECTION. Section 4. Benefits, protections, and responsibilities of parties to civil union.**

5 (1) Parties to a civil union have all the same benefits, protections, and responsibilities under law, whether they  
6 derive from statute, administrative rule, court rule, policy, common law, or any other source of civil law, that are  
7 granted to spouses in a marriage.

8 (2) For the purposes of subsection (1), a party to a civil union must be included in any definition or use  
9 of the terms "spouse," "family," "immediate family," "dependent," "next of kin," and other terms that denote the  
10 spousal relationship, as those terms are used throughout Montana law.

11 (3) Parties to a civil union are responsible for the support of one another to the same degree and in the  
12 same manner as prescribed in Title 40, chapter 2, parts 1 and 2, for married persons.

13 (4) The law of domestic relations, including annulment, separation and dissolution, parenting and child  
14 support, and property division and maintenance apply to parties to a civil union.

15 (5) The following is a nonexclusive list of legal benefits, protections, and responsibilities of spouses,  
16 which apply in like manner to parties to a civil union:

17 (a) laws relating to title, tenure, descent and distribution, intestate succession, waiver of will,  
18 survivorship, or other incidents of the acquisition, ownership, or transfer, inter vivos or at death, of real or  
19 personal property, including eligibility to hold real and personal property as tenants by the entirety. The parties  
20 to a civil union are determined to meet the common law unity of person qualification for purposes of a tenancy  
21 by the entirety.

22 (b) causes of action related to or dependent upon spousal status, including an action for wrongful death,  
23 emotional distress, loss of consortium, or torts or actions under contracts reciting, related to, or dependent upon  
24 spousal status;

25 (c) probate law and procedure, including nonprobate transfers;

26 (d) adoption law and procedure;

27 (e) group insurance for state employees under Title 2, chapter 18, parts 7 and 8;

28 (f) domestic violence and partner or family member assault programs;

29 (g) prohibitions against discrimination based upon marital status;

30 (h) victim's compensation rights;

- 1 (i) workers' compensation benefits;
- 2 (j) laws relating to emergency and nonemergency medical care and treatment, hospital visitation, and  
3 notification, including the rights of a resident of a long-term care facility under 50-5-1104;
- 4 (k) terminal care documents under Title 50, chapter 9, and durable power of attorney for health care  
5 execution and revocation under 72-31-222;
- 6 (l) parental leave benefits under 2-18-606;
- 7 (m) public assistance benefits under state law;
- 8 (n) laws relating to taxes imposed by the state or a local government;
- 9 (o) laws relating to immunity from compelled testimony and the spousal communication privilege under  
10 26-1-802;
- 11 (p) the rights of a surviving spouse under Title 72, chapter 2;
- 12 (q) laws relating to making, revoking, and objecting to anatomical gifts by others under 72-17-214;
- 13 (r) legal requirements for assignment of wages under 31-1-306.
- 14 (6) The rights and responsibilities of parties to a civil union with respect to a child of whom either  
15 becomes the natural parent during the term of the civil union are the same as those of a married couple with  
16 respect to a child of whom either spouse becomes the natural parent during the marriage.

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18 **NEW SECTION. Section 5. Modification of civil union terms.** Parties to a civil union may modify the  
19 terms, conditions, or effects of their civil union in the same manner and to the same extent as married persons  
20 who execute a premarital agreement or other agreement recognized and enforceable under the law setting forth  
21 particular understandings with respect to their union.

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23 **NEW SECTION. Section 6. Dissolution of civil unions.** The district court has jurisdiction over all  
24 proceedings relating to the dissolution of civil unions. The dissolution of civil unions must follow the same  
25 procedures and be subject to the same substantive rights and obligations that are involved in the dissolution of  
26 marriage in accordance with Title 40, chapter 4, including residency requirements.

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28 **NEW SECTION. Section 7. Department duties.** (1) The department shall provide civil union license  
29 and certificate forms to all clerks of district court.

30 (2) The department shall keep a record of all civil unions in the same manner that records of marriage

1 certificates are kept under 50-15-301.

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3 **NEW SECTION. Section 8. Issuance of civil union license -- certification -- return of civil union**  
4 **certificate.** (1) Upon application in a form prescribed by the department and payment of the fees applicable to  
5 a marriage license, a clerk of the district court shall issue a civil union license in the form prescribed by the  
6 department and shall enter on the license the names of the parties to the proposed civil union, fill out the license  
7 as far as practicable, and retain a copy in the clerk's office. At least one party to the proposed civil union shall  
8 sign the application attesting to the accuracy of the facts stated. The license must be issued by the clerk of  
9 district court for the county where either party resides. If both parties are nonresidents of the state, the license  
10 may be obtained from any clerk of the district court.

11 (2) A civil union license must be delivered to the individual who shall certify the civil union by one of the  
12 parties to the proposed civil union. The license is valid for 180 days from the date of issuance. If the proposed  
13 civil union is not certified within 180 days from the date of issuance, the license is void. After an individual has  
14 certified the civil union, that individual shall fill out that part of the civil union license form provided for  
15 certification, sign the form, and certify the civil union. After certification, the document must be known as a civil  
16 union certificate.

17 (3) Within 10 days of the certification, the individual performing the certification shall return the civil union  
18 certificate to the office of the clerk of the district court from which the license was issued. The clerk shall file the  
19 original according to 50-15-109.

20 (4) A clerk of the district court who knowingly issues a civil union license upon application of an individual  
21 residing in another county in the state or a clerk who issues a license without first requiring the applicant to fill  
22 out, sign, and make an oath to the declaration contained in the license, as provided in subsection (1), shall be  
23 fined not more than \$50 or less than \$20.

24 (5) An individual applying to a clerk of the district court for a civil union license who makes a material  
25 misrepresentation in the declaration of intention is subject to prosecution under the provisions of Title 45, chapter  
26 7, part 2.

27 (6) A clerk of the district court shall provide an individual who applies for a civil union license with  
28 information prepared by the secretary of state that advises the individual of the benefits, protections, and  
29 responsibilities of a civil union and of the fact that Montana residency may be required for dissolution of a civil  
30 union in Montana.

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2           **NEW SECTION. Section 9. Issuance of license.** A clerk of the district court shall issue a civil union  
3 license to all applicants who have complied with the provisions of [section 8] and who are otherwise qualified  
4 under the laws of the state to apply for a civil union license.

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6           **NEW SECTION. Section 10. Proof of legal qualifications of parties to civil union -- penalty.** (1)  
7 Before issuing a civil union license to an applicant, the clerk of the district court must be confident, through  
8 presentation of affidavits or other proof, that each party to the proposed civil union meets the statutory criteria  
9 to enter into a civil union.

10           (2) Affidavits must be in a form prescribed by the department and must be attached to and filed with the  
11 civil union certificate in the office of the clerk of the district court where the license was issued.

12           (3) A clerk of the district court who fails to comply with the provisions of this section or who issues a civil  
13 union license with knowledge that either or both of the parties to a civil union have failed to comply with the  
14 requirements of the laws of this state or an individual who, having authority and having knowledge that the  
15 requirements have not been complied with, certifies a civil union, shall be fined not more than \$100.

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17           **NEW SECTION. Section 11. Restrictions on minors and incompetent persons.** (1) A clerk of the  
18 district court may not issue a civil union license when either party to the intended civil union:

19           (a) is under 18 years of age;

20           (b) lacks the capacity to consent because of mental incapacity or infirmity; or

21           (c) is under guardianship, without the written consent of the guardian.

22           (2) A clerk of district court who knowingly violates subsection (1) shall be fined not more than \$20. An  
23 individual who aids in procuring a civil union license by falsely pretending to be the guardian having authority  
24 to give consent to the civil union shall be fined not more than \$500.

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26           **NEW SECTION. Section 12. Persons authorized to certify civil unions.** Civil unions may be certified  
27 by a mayor, district court judge, city court judge, justice of the peace, or tribal judge.

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29           **NEW SECTION. Section 13. Civil union license required for certification -- failure to return.** (1)  
30 Individuals authorized by [section 12] to certify civil unions shall require a civil union license of the parties before

1 certifying the civil union.

2 (2) An individual who certifies a civil union shall be fined not less than \$10 if the individual:

3 (a) certifies a civil union without first obtaining the license; or

4 (b) fails to properly fill out the license and, within 10 days from the date of the certification, return the  
5 license and certificate of civil union to the office of the clerk of the district court from which it was issued.

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7 **NEW SECTION. Section 14. Certification by unauthorized individual -- penalty -- validity of civil**

8 **unions.** (1) An unauthorized individual who knowingly undertakes to join others in a civil union is guilty of a  
9 misdemeanor and upon conviction shall be imprisoned not more than 6 months, fined not more than \$500 or  
10 less than \$100, or both.

11 (2) A civil union certified before an individual falsely professing to be authorized to certify a civil union  
12 under [section 12] is valid if the civil union is in other respects lawful and if either of the parties to a civil union  
13 believed that the party was lawfully joined in a civil union.

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15 **NEW SECTION. Section 15. Evidence of civil union.** A copy of the record of the civil union received

16 from the clerk of the district court or the department is presumptive evidence of the civil union in all courts.

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18 **NEW SECTION. Section 16. Correction of certificate.** (1) Within 6 months after a civil union is

19 certified, the clerk of the district court may correct or complete a civil union certificate upon application by a party  
20 to a civil union or by the individual who certified the civil union. The clerk of the district court shall certify that the  
21 correction or completion was made pursuant to this section and note the date. The clerk of the district court may  
22 refuse an application for correction or completion. Upon refusal, the applicant may petition the district court for  
23 the correction or completion.

24 (2) After 6 months from the date a civil union is certified, a civil union certificate may only be corrected  
25 or amended pursuant to decree of the district court in the district where the original certificate is filed.

26 (3) The district court shall set a time for a hearing. After a hearing, the court shall make findings with  
27 respect to the correction of the civil union certificate as are supported by the evidence. The court shall issue a  
28 decree setting forth the facts as found and shall transmit a certified copy of the decree to the department for  
29 inclusion in the system of vital records under Title 50, chapter 15. The department shall transmit the copy to the  
30 appropriate clerk of the district court to amend the original or issue a new certificate. The words "Court

1 Amended" must be typed, written, or stamped at the top of the new or amended certificate with the date of the  
2 decree and the name of the issuing court.

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4 **NEW SECTION. Section 17. Delayed certificates.** (1) Individuals who were parties to a certified civil  
5 union ceremony in this state for whom a certificate of civil union was not filed, as required by law, may petition  
6 the district court of the district in which the civil union license was obtained to determine the facts and to order  
7 the issuance of a delayed certificate of civil union.

8 (2) The district court shall set a time for hearing on the petition. After hearing proper and relevant  
9 evidence as may be presented, the court shall make findings with respect to the civil union that are supported  
10 by the evidence.

11 (3) The district court shall issue a decree setting forth the facts as found and shall transmit a certified  
12 copy of the facts to the department.

13 (4) When a delayed certificate is to be issued, the department shall prepare a delayed certificate of civil  
14 union and shall transmit it, with the decree, to the clerk of the district court where the civil union license was  
15 issued. This delayed certificate must have the word "Delayed" printed at the top and must certify that the  
16 certificate was ordered by a court pursuant to this section, with the date of the decree. The clerk of the district  
17 court shall file the delayed certificate in accordance with the provisions of 50-15-109.

18 (5) A clerk of the district court receiving new certificates in accordance with this section shall file and  
19 index them in the most recent book of civil unions and shall also index them with civil unions occurring at the  
20 same time.

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